

## Faulk, Camilla

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**From:** Gordon Wright [gwright@co.grays-harbor.wa.us]  
**Sent:** Wednesday, April 27, 2011 10:35 AM  
**To:** Camilla.Faulk@courts.wa.gov.  
**Subject:** Purposed New Rule CrR 4.11 - Witness recordings

To Whom It May Concern:

I am a Deputy Prosecuting Attorney for Grays Harbor County and I am writing in opposition of the purposed new rule to allow audio recordings of witnesses/victims during pre-trial interviews by the defense. I believe such a rule would have a profound chilling effect on the ability of the state to proceed with many of its criminal cases.

It has been my experience that getting witnesses to agree to a defense interview depends on how comfortable they feel. Some are totally okay with the process and have no qualms about it. Most, however, demanded that the prosecutor be present and adamantly refuse to agree to be recorded. This is especially true in domestic violence cases or where the witnesses are neighbors or co-workers of the accused. The interview itself is traumatic enough but knowing that it will be recorded, and that any misstatement they make there or on the witness stand will be used to impeach their testimony on cross-examination, is enough to cause them to either refuse the interview or severely limit what they are willing to say during the recorded interview.

Victims also have rights. This is too often ignored or forgotten in the quest to assure that the defendant is afforded all possible rights and privileges. The victim/witness has already been subjected to an alleged crime by the defendant and now they will have to be involuntarily recorded by the defendant's attorney while re-living the often traumatic event. What about their rights? Do they have to expose themselves to attack on the witness stand during cross examination because they did not repeat their excited utterance or initial police statement at trial in exactly the same order or same words as they did in a recorded interview? It has been my experience that witnesses almost NEVER say exactly the same thing on the witness stand as they do during interviews or even from discussions in the hallway right before they testify. They are nervous and anxious about testifying and that affects their testimony. They get the broad picture right but the details are frequently left out or changed. This doesn't mean they are wrong or are lying, just that they are nervous.

I think that enacting this rule would be they start of a slippery slope. First it would be audio recordings; but wouldn't it be even easier for the defendant if their attorney could video record the interview? Then, you could attack them on the witness stand for their shifty eyes or perceived dishonest body language. After that it would be polygraphs. Where does the right of the defendant to attack the state's witnesses/victims end?

I know that you will consider this purposed rule change carefully. I hope that you will not bow down to defense bar pressure at the expense of innocent victims nor civilians who are brave enough to do their civic duty by coming forward when they witness a crime.

Thank you for your time.

Sincerely,

Gordon L. Wright

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